

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Feb 28, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZEBULION IAN LISTER,

Defendant.

No. 1:22-CR-02006-MKD-1

ORDER FOLLOWING INITIAL  
APPEARANCE AND  
ARRAIGNMENT

On Monday, February 27, 2023, Defendant made an initial appearance and was arraigned based on the Indictment (ECF No. 1). Defendant was represented by Assistant Federal Defender Nick Mirr. Assistant United States Attorney Todd Swensen represented the United States.

Defendant was advised of and acknowledged Defendant's rights.

The Court entered a plea of not guilty on Defendant's behalf.

1 The Office of the Federal Defenders was appointed to represent Defendant.

2 Prior to the hearing, the United States filed a Motion for Detention (ECF No.  
3 59). Defendant requested a detention hearing be held. No party objected to  
4 holding the hearing immediately, and the Court then held a detention hearing. An  
5 order for that hearing shall be entered separately.

6 Accordingly, **IT IS ORDERED:**

7 1. The Court directs the parties to review the Local Criminal Rules  
8 governing discovery and other issues in this case.  
9 <http://www.waed.uscourts.gov/court-info/local-rules-and-orders/general-orders>.

10 2. Under federal law, including Rule 5(f) of the Federal Rules of  
11 Criminal Procedure, *Brady v. Maryland*, 373 U.S. 83 (1963), and all applicable  
12 decisions from the Supreme Court and the Ninth Circuit interpreting *Brady*, the  
13 United States has a continuing obligation to produce all information or evidence  
14 known to the United States relating to guilt or punishment that might reasonably be  
15 considered favorable to Defendant's case, even if the evidence is not admissible so  
16 long as it is reasonably likely to lead to admissible evidence. *See United States v.*  
17 *Price*, 566 F.3d 900, 913 n.14 (9th Cir. 2009). Accordingly, the Court orders the  
18 United States to produce to Defendant in a timely manner all such information or  
19 evidence.  
20

1 Information or evidence may be favorable to a defendant's case if it either  
2 may help bolster the defendant's case or impeach a prosecutor's witness or other  
3 government evidence. If doubt exists, it should be resolved in favor of Defendant  
4 with full disclosure being made.

5 If the United States believes that a required disclosure would compromise  
6 witness safety, victim rights, national security, a sensitive law-enforcement  
7 technique, or any other substantial government interest, the United States may  
8 apply to the Court for a modification of the requirements of this Disclosure Order,  
9 which may include *in camera* review and/or withholding or subjecting to a  
10 protective order all or part of the information.

11 This Disclosure Order is entered under Rule 5(f) and does not relieve any  
12 party in this matter of any other discovery obligation. The consequences for  
13 violating either this Disclosure Order or the United States' obligations under *Brady*  
14 include, but are not limited to, the following: contempt, sanction, referral to a  
15 disciplinary authority, adverse jury instruction, exclusion of evidence, and  
16 dismissal of charges. Nothing in this Disclosure Order enlarges or diminishes the  
17 United States' obligation to disclose information and evidence to a defendant under  
18 *Brady*, as interpreted and applied under Supreme Court and Ninth Circuit  
19 precedent. As the Supreme Court noted, "the government violates the  
20 Constitution's Due Process Clause 'if it withholds evidence that is favorable to the

1 defense and material to the defendant's guilt or punishment.'" *Turner v. United*  
2 *States*, 137 S. Ct. 1885, 1888 (2017) (quoting *Smith v. Cain*, 565 U.S. 73, 75  
3 (2012)).

4 **IT IS SO ORDERED.**

5 DATED February 28, 2023.



A handwritten signature in blue ink, reading "Alexander C. Ekstrom", is positioned above a horizontal line.

ALEXANDER C. EKSTROM

UNITED STATES MAGISTRATE JUDGE